

IN THE SENATE

SENATE BILL NO. 1235

BY LOCAL GOVERNMENT AND TAXATION COMMITTEE

AN ACT

RELATING TO PLATS AND VACATIONS; AMENDING SECTION 50-1306A, IDAHO CODE, TO  
REVISE PROCEDURES RELATING TO THE VACATION OF PLATS BY CITIES AND COUN-  
TIES, TO PROVIDE FOR CERTAIN NOTICE AND TO REMOVE A CODE REFERENCE; AND  
AMENDING SECTION 50-1321, IDAHO CODE, TO REVISE CERTAIN NOTICE PROVI-  
SIONS AND TO REMOVE A REQUIREMENT FOR CITY CONSENT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 50-1306A, Idaho Code, be, and the same is hereby  
amended to read as follows:

50-1306A. VACATION OF PLATS -- PROCEDURE. (1) Any person, persons,  
firm, association, corporation or other legally recognized form of business  
desiring to vacate a plat or any part thereof ~~which is inside or within one~~  
~~(1) mile of the boundaries of any city~~ must petition the city council ~~to~~  
~~vacate if it is located within the boundaries of a city, or the county commis-~~  
~~sioners if it is located within the unincorporated area of the county.~~ Such  
petition shall set forth particular circumstances of the requests to vacate;  
contain a legal description of the platted area or property to be vacated;  
the names of the persons affected thereby, and said petition shall be filed  
with the city clerk.

(2) Written notice of public hearing on said petition shall be given, by  
certified mail with return receipt, at least ten (10) days prior to the date  
of public hearing to all property owners within three hundred (300) feet of  
the boundaries of the area described in the petition. Such notice of public  
hearing shall also be published once a week for two (2) successive weeks in  
the official newspaper of the city, the last of which shall be not less than  
seven (7) days prior to the date of said hearing; provided, however, that in  
a proceeding as to the vacation of all or a portion of a cemetery plat where  
there has been no interment, or in the case of a cemetery being within three  
hundred (300) feet of another plat for which a vacation is sought, publi-  
cation of the notice of hearing shall be the only required notice as to the  
property owners in the cemetery.

(3) When the procedures set forth herein have been fulfilled, the city  
council may grant the request to vacate with such restrictions as they deem  
necessary in the public interest.

~~(4) When the platted area lies more than one (1) mile beyond the city~~  
~~limits, the procedures set forth herein shall be followed with the county~~  
~~commissioners of the county wherein the property lies. The county commis-~~  
~~sioners shall have authority, comparable to the city council, to grant the~~  
~~vacation, provided, however, when the platted area lies beyond one (1) mile~~  
~~of the city limits, but adjacent to a platted area within one (1) mile of the~~  
~~city, consent of the city council of the affected city shall be necessary in~~  
~~granting any vacation by the county commissioners~~ If a petition to vacate is

1 brought before county commissioners, and the plat or part thereof which is  
 2 the subject of the petition is located within one (1) mile of the boundaries  
 3 of any city, the county commissioners shall cause written notice of the pub-  
 4 lic hearing on the petition to be given to the mayor or chief administrative  
 5 officer of the city by regular mail at least thirty (30) days prior to the  
 6 date of public hearing.

7 (5) In the case of easements granted for gas, sewer, water, telephone,  
 8 cable television, power, drainage, and slope purposes, public notice of in-  
 9 tent to vacate is not required. Vacation of these easements shall occur upon  
 10 the recording of the new or amended plat, provided that all affected easement  
 11 holders have been notified by certified mail, return receipt requested, of  
 12 the proposed vacation and have agreed to the same in writing.

13 (6) When public streets or public rights-of-way are located within the  
 14 boundary of a highway district, the highway district commissioners shall as-  
 15 sume the authority to vacate said public streets and public rights-of-way as  
 16 ~~provided in subsection (4) of this section.~~

17 (7) All publication costs shall be at the expense of the petitioner.

18 (8) Public highway agencies acquiring real property within a platted  
 19 subdivision for highway right-of-way purposes shall be exempt from the pro-  
 20 visions of this section.

21 (9) Land exclusive of public right-of-way that has been subdivided and  
 22 platted in accordance with this chapter need not be vacated in order to be  
 23 replatted.

24 SECTION 2. That Section 50-1321, Idaho Code, be, and the same is hereby  
 25 amended to read as follows:

26 50-1321. NECESSITY FOR CONSENT OF ADJOINING OWNERS -- ACKNOWLEDGMENT  
 27 AND FILING OF CONSENT -- LIMITATION ON RULE -- PREREQUISITES TO ORDER OF  
 28 VACATION. No vacation of a public street, public right of way or any part  
 29 thereof having been duly accepted and recorded as part of a plat or subdi-  
 30 vided tract shall take place unless the consent of the adjoining owners be  
 31 obtained in writing and delivered to the public highway agency having juris-  
 32 diction over said public street or public right of way. Such public street  
 33 or public right of way may, nevertheless, be vacated without such consent of  
 34 the owners of the property abutting upon such public street or public right  
 35 of way when such public street or public right of way has not been opened or  
 36 used by the public for a period of five (5) years and when such nonconsenting  
 37 owner or owners have access to his, her or their property from some other  
 38 public street, public right of way or private road. However, before such  
 39 order of vacation can be entered it must appear to the satisfaction of the  
 40 public highway agency that the owner or owners of the property abutting said  
 41 public street or public right of way have been served with notice of the pro-  
 42 posed abandonment in the same manner and for the same time as is now or may  
 43 hereafter be provided for the service of the summons in an action at law. Any  
 44 vacation of lands within one (1) mile of a city shall require written noti-  
 45 fication and consent of to the city by regular mail at least thirty (30) days  
 46 prior to the vacation.